

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Local Competition and Broadband Reporting)	CC Docket 99-301
)	

**COMMENTS
of the
ORGANIZATION FOR THE PROMOTION AND ADVANCEMENT
OF SMALL TELECOMMUNICATIONS COMPANIES**

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I. Introduction

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) files these comments in the above-noted proceeding.¹ OPASTCO is a national trade association representing over 500 independently owned and operated telephone companies serving rural areas of the United States. Its members, which include both commercial companies and cooperatives, together serve over 2.5 million customers. All of OPASTCO's members are rural telephone companies as defined in 47 U.S.C. §153(37). Most of OPASTCO's member carriers are either presently offering, or are preparing to offer broadband or high-speed services to their customers.

OPASTCO recognizes the Commission's need for relevant data on the availability of

¹ In the Matter of *Local Competition and Broadband Reporting*, Second Notice of Proposed Rulemaking, CC Docket No. 99-301, FCC 01-19 (rel. Jan. 19, 2001)(Second NPRM).

advanced services in order to make informed decisions and to fulfill its obligations under section 706 of the Telecommunications Act of 1996 (the Act). However, OPASTCO believes that there is no need to increase the degree of granularity of the data collected, as sought in the Second NPRM. Moreover, as discussed more fully below, the significant costs and burdens that the proposed reporting requirements would impose on small carriers and their customers would far outweigh any benefits that the information may provide.

II. The additional information that the Commission seeks to collect is unnecessary to satisfy its obligations under Sec. 706 of the Act

The Commission correctly notes that it is required, under Sec. 706 of the Act, to initiate notices of inquiry on a “regular” basis concerning the availability of advanced services to all Americans.² However, the second NPRM further declares that “additional data” on broadband is “essential” in order for the Commission to “more fully” satisfy its obligations under Sec. 706.³ This assertion is far from established.

As OPASTCO stated in its comments to the first Notice of Proposed Rulemaking in this proceeding, we agree that the Commission needs accurate information in order to make informed decisions.⁴ OPASTCO members are proud of their efforts in deploying advanced services in their rural service areas - and several available studies clearly demonstrate that these

² Second NPRM, para. 2; para. 39.

³ *Ibid.*

⁴ OPASTCO comments on the Notice of Proposed Rulemaking in CC Docket No. 99-301 (filed December 3, 1999), pp. 1 - 2 (OPASTCO comments).

ongoing efforts have been, and continue to be, largely successful.⁵

However, there is no requirement in Sec. 706 which compels the Commission to seek data at the exceedingly granular level proposed in the Second NPRM.⁶ This level of granularity would be costly and difficult for most small carriers to obtain and would, as OPASTCO warned earlier in this proceeding,⁷ further hamper the efforts of small carriers to deploy broadband and high-speed services. Contrary to being “essential” to fulfill the Commission’s obligations, the proposed data collection would thwart not only the deregulatory goals of the Act,⁸ but the goals of Sec. 706 itself. The irony of the proposed expansion of reporting requirements is that, if adopted, they would make it more difficult for providers to deploy service to the very areas the Commission has identified as being “vulnerable” to not having timely access to advanced services.⁹

III. Sufficient data is available from other sources

The Second NPRM seeks comment on whether the current reporting threshold of 250 broadband or high-speed connections should be retained, raised, or even lowered.¹⁰ The Second NPRM states:

Indeed, it is difficult to discern whether the absence of information about [areas

⁵ See section III, *infra*.

⁶ The Second NPRM contemplates collecting new information, including subscriber counts by zip code, differentiating between residential, small business, and large business customers, and specifying the type of technology used to deliver service.

⁷ OPASTCO comments, pp. 3 - 4.

⁸ See fn. 25, *infra*.

⁹ Second NPRM, para. 2; para. 21.

¹⁰ *Id.*, para. 13.

served by rural carriers] indicates that there are no broadband services available or rather that providers are, in fact, serving small customer bases but do not meet the existing thresholds.¹¹

This statement is perplexing, because the Commission has, in fact, been provided with copious data, voluntarily collected, which makes it quite simple to discern that rural carriers are indeed deploying broadband services.

Earlier in this proceeding, OPASTCO noted that a joint survey of member rural carriers, conducted two years ago with the National Telephone Cooperative Association (NTCA), found that 30 percent of respondents were, at that time, already offering digital subscriber line (DSL) services.¹² An exhaustive study conducted last year by the National Exchange Carrier Association (NECA) found that 65 percent of access lines served by the most rural carriers will be capable of delivering broadband services by 2002.¹³ And, a recent NTCA survey of rural carriers found that 79 percent of respondents will offer advanced services this year.¹⁴

The Second NPRM inquires as to whether alternative sources of information are available.¹⁵ Clearly, they are. The surveys and studies cited above may not in each instance reach the level of granularity contemplated by the Second NPRM, but they certainly provide plentiful information for the Commission to more than adequately fulfill its obligations under Sec.

¹¹ *Id.*

¹² OPASTCO comments, fn. 10.

¹³ *NECA Rural Broadband Cost Study* (June 21, 2000), p. 2.

¹⁴ *NTCA Members Internet/Broadband Survey Report* (Nov. 2000), p. 3.

¹⁵ Second NPRM, para. 21.

706.¹⁶

Because sufficient information is available from other sources, the reporting requirements should be lifted from all small carriers that meet the “rural telephone company” definition under the Act.¹⁷ If rural telephone companies are not exempted, the current threshold should be raised. At the very least, in no circumstance should it be lowered. Furthermore, any requirement to provide information more frequently than once a year, as the Commission contemplates,¹⁸ is excessive.

IV. The proposed data collections would be costly and onerous for small carriers

On a positive note, the Second NPRM declares:

We look forward to working closely with service providers, including past and potential respondents, to minimize burdens wherever possible and *particularly for smaller providers that may have limited resources*.¹⁹

OPASTCO is gratified that the Commission is cognizant of the fact that small providers lack the resources - in terms of funding, manpower, data processing capabilities, etc. - enjoyed by larger organizations.²⁰ This scarcity of resources typically leads to a situation where any new requirement, however easy compliance might be for large carriers, results in a disproportionate

¹⁶ The Second NPRM notes (para. 14) that Iowa Telecom wisely suggested that statistical samplings be substituted for costly, burdensome data gathering requirements in the case of carriers serving rural communities.

¹⁷ 47 U.S.C. §153(37).

¹⁸ Second NPRM, para. 28.

¹⁹ *Id.*, para. 11 (emphasis added).

²⁰ It is important to remember that these “larger organizations” are not limited to incumbent voice service providers, but include competitive local exchange carriers, interexchange carriers, Internet service providers, wireless voice and data carriers, etc., all of which often have resources which dwarf those of small, rural telephone companies.

burden falling upon small carriers. Such is the case in this proceeding.

The Second NPRM requests comment on the accuracy of the Commission's burden estimate.²¹ However, no estimate is included in the Second NPRM regarding how difficult it will be to gather the proposed additional information. The current version of Form 477 indicates that the form should take approximately 11 hours to complete. OPASTCO members which meet or exceed the current reporting threshold for deployment of advanced services indicate that this 11-hour estimate is not accurate. These members estimate that the actual hours needed simply to compile all the information currently required range from 15 to 20 hours. Furthermore, the amount of time needed to collect the new information proposed in the Second NPRM appears to be closer to 40 hours, and the need to update and track all of the new information on an ongoing basis would be so onerous that it may necessitate the hiring of additional staff.

Distinguishing between residential and business customers is extremely difficult for small carriers which have successfully deployed broadband to several hundred consumers. Estimates in these cases may be highly unreliable, forcing carriers to manually examine the name on each account in an attempt to distinguish between business and residential customers. Some small carriers utilize more than one technology to provide service, namely a combination of DSL and cable modem services, further complicating the task. Distinguishing between residential, large business, *and* small business customers, in addition to noting whether they receive broadband or

²¹ Second NPRM, para. 31.

high-speed service, as contemplated by the Commission,²² would be far more problematic.

Under current rules, several departments within a company must often coordinate their efforts in order to cull the necessary data. Engineering staff are diverted from deploying services to customers in order to fulfill regulatory requirements. Personnel must query broadband circuits not used for access services, and manually review these circuits to eliminate those which are exclusively used for interoffice traffic between carriers. Others must then review the remaining circuits to identify point-to-point circuits that connect multiple locations of more than one customer, determine the data carrying capacity (both upstream and downstream) of the lines in question, and single out circuits that provide fiber to the end-user. The manual classification of these varied circuits is extremely time-consuming and labor-intensive.

The only alternative to manual examination of customer accounts involves reconfiguring software databases. While this may not be difficult for carriers serving only a few broadband customers, it may necessitate a complete revamping of databases for others. Many OPASTCO members outsource their billing and provisioning software, and would have to pay considerable fees in order to gather the data proposed by the Second NPRM. If the Commission does not fully lift the reporting requirements on carriers defined as “rural telephone companies” it should - in light of these costs - limit the information collected to a binary “yes or no” question regarding whether advanced services of any type are offered to any consumers in a given zip code.

²² *Id.*, para. 17.

V. In a competitive environment, the confidentiality of reported data is essential

The Second NPRM proposes to establish a “rebuttable presumption” that data disclosed through Form 477 should be publicly available.²³ This ignores the fact that many small carriers, even those serving rural areas, may be providing advanced services in their own or nearby territory and are engaged in fierce competition with other providers. For example, small local exchange carriers often pursue an “edge out” strategy to offer traditional voice and/or advanced services in neighboring communities served by large companies. The large companies may seek to use the data disclosed in Form 477 to the detriment of such competition. Rather than forcing small companies to ask the Commission in each case to keep its information confidential, the Commission should make it clear from the outset that only aggregate data, not company-specific information, will be released. This pitfall can be avoided altogether by relying on voluntary reporting and surveys from small carriers.²⁴

VI. Paperwork Reduction and Regulatory Flexibility Analyses

As noted in section III, *supra*, the Second NPRM proposes exceedingly detailed and costly data gathering requirements and seeks comment on the accuracy of its burden estimate, but provides no estimate upon which to comment. Furthermore, as discussed in sections I and IV, *supra*, the Second NPRM does not explain the need to collect data at the level of granularity it proposes, especially when sufficient information is available from alternative sources. Nor does it attempt to quantify the substantial costs to small carriers and their

²³ *Id.*, para. 26.

consumers, or any anticipated benefits. Before imposing additional reporting requirements on small carriers,²⁵ the Commission should determine that the significant costs that such rules would impose will be outweighed by significant benefits.²⁶

VI. Conclusion

The Commission should rely on voluntary reporting and surveys, rather than impose any reporting requirement on rural telephone companies, as defined in the Act. At the very least, the Commission should under no circumstances lower the current reporting thresholds for these carriers. Nor should the Commission seek to gather more granular data from small, rural carriers beyond whether broadband or high-speed services of any type are offered to any kind of customer in a given zip code. Such information should not be collected more frequently than once a year, and company-specific information must remain confidential. By reducing the reporting burdens placed upon small carriers, the Commission would be adhering to the mandate of Sec. 706 to reduce barriers to the deployment of advanced services to those

²⁴ OPASTCO comments, p. 4; pp. 6 - 7.

²⁵ Despite the Act's deregulatory aims, small carriers must contend with more paperwork and reporting requirements than ever. The costs of these requirements, however well-intentioned, are cumulative. *See* comments of Blustem Telephone Co., *et. al.* in CC Docket No. 00-229 (Jan. 12, 2001), pp. 6 - 8, noting that despite the Commission's "on-going commitment" to reduce burdensome regulations, new obligations include (for example) the Numbering Resource Utilization/Forecast Report, the Telecommunications Reporting Worksheet, the Lifeline and Link Up Worksheet (which requires a Service Provider Identification Number obtained via a Service Provider Information Form), and new requirements regarding slamming and compliance with the Communications Assistance for Law Enforcement Act.

²⁶ *See* OPASTCO comments, *Biennial Review 2000 Staff Report*, CC Docket No. 00-175 (fil. Oct. 10, 2000), pp. 5 - 6: "OPASTCO believes that the unique role played by small, rural [incumbent local exchange carriers (ILECs)] in providing vital services to all consumers in difficult, high-cost environments merits the use of the most stringent possible standards by the Commission when it measures the costs versus the benefits of new regulations. As a general rule, if quantifiable data is not available which clearly demonstrates that the benefits of new regulations outweigh the costs to small ILECs and their customers, then the Commission

consumers, in sparsely populated rural areas and elsewhere, who may be “vulnerable” to gaining access to advanced services in an untimely manner.

Respectfully submitted,

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should refrain from imposing such new regulations on small ILECs.”

CERTIFICATE OF SERVICE

I, Tiffany N. Belk, hereby certify that a copy of the comments by the Organization for the Promotion and Advancement of Small Telecommunications Companies was either hand-delivered or sent by first class United States mail, postage prepaid, on this, the 19th day of March, 2001, to those listed on the attached sheet.

/s/ Tiffany N. Belk

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